

SECTION H
SPECIAL CONTRACT REQUIREMENTS

H.1 Section H

Government Furnished Information

H.1.1.1. The Government will provide a beneficiary zip code file on a monthly basis identifying the number of beneficiaries residing in each zip code.

H.1.1.2. Connectivity to required DoD Information Technology (IT) systems shall be through the Pharmacy Data Transaction Service (PDTS). Data submitted to PDTS by the contractor, as specified in the TRRx PDTS Interface Control Document (ICD) at Attachment 4, Section J, will be used to generate TRICARE Encounter Data (TED) records. PDTS will transmit all TED records to TRICARE Management Activity (TMA). Connectivity to PDTS is described in the ICD at Attachment 4, Section J. Physical connectivity will be accomplished via a dedicated high-speed data link, e.g., a T1/T3 line. The Government will install and maintain this line.

H.1.1.3. The Government will provide Prior Authorization criteria for any pharmaceutical item designated by the Department of Defense (DoD) Pharmacy and Therapeutics (P&T) committee as requiring Prior Authorization. The Government will also provide Medical Necessity Determination criteria for pharmaceuticals determined to be non-formulary items.

H.2. Financial Incentives for Actual Network Reimbursement Costs

H.2.1. The following table, Network Reimbursement Table H-1, contains the "Guaranteed Average Discount Percentage" and "Guaranteed Average Dispensing Fee" proposed by the contractor by Brand and Generic drugs for each respective option period.

NETWORK Reimbursement Table H-1 For Use in Determining Incentives			
Option Period	Type of Rx	Guaranteed Average Discount Percentage	Guaranteed Average Dispensing Fee
1	Brand		
1	Generic		
2	Brand		
2	Generic		
3	Brand		
3	Generic		
4	Brand		
4	Generic		
5	Brand		
5	Generic		
Note for Network Reimbursement Table H-1			
1. Each applicable "Guaranteed Average Discount Percentage" and "Guaranteed Average Dispensing Fee" in this table will be used to calculate incentives as described in Section H.2.			

H.2.2. Subject to paragraph H.2.5. below, the contractor will earn an incentive if the total actual network reimbursement cost in a contract option period is less than the total network reimbursement cost that would have resulted from applying the Guaranteed Average Discount Percentage and the Guaranteed Average

SECTION H
SPECIAL CONTRACT REQUIREMENTS

Dispensing Fee per prescription to the prescriptions filled in the network during the contract option period. The costs will be calculated by applying the AWP that is in effect at the time the prescription transaction is processed. The cost calculations will include the impact of using the lower of the calculated price or the Usual & Customary price. The incentive will equal 5% of the difference between the actual costs and Government calculated costs, up to the maximum amounts per contract option period listed below.

Contract Option Period	Maximum Incentive
1	\$1,500,000
2	\$1,750,000
3	\$2,000,000
4	\$2,250,000
5	\$2,500,000

H.2.3. The Government will assess a Negative Incentive if the total actual network reimbursement cost in a contract option period exceeds the total network reimbursement cost that would have resulted from applying the Guaranteed Average Discount Percentage and the Guaranteed Average Dispensing Fee Per Prescription to the prescriptions filled in the network during the contract option period. The difference between the actual costs and Government calculated costs will be deducted from future payments to the contractor.

H.2.4. The PDTS will accumulate reimbursement data from all retail network pharmacy transactions. PDTS will be the sole determining source for calculating the payment of an incentive or the assessment of a negative incentive. The Government will provide actual pharmacy reimbursement cost data to the contractor within 30 calendar days of the end of an option period.

H.2.5. To earn the incentive payment referenced in paragraph H.2.2. above, the contractor must meet or exceed the network access standards for a minimum of 11 months during each option period.

H.3. SPECIAL PROVISION - PRIVACY OF PROTECTED HEALTH INFORMATION

H.3.1. Definitions. As used in this Provision:

- *Individual* has the same meaning as the term ``individual'' in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule* means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- *Protected Health Information* has the same meaning as the term ``protected health information'' in 45 CFR 164.501, limited to the information created or received by The contractor from or on behalf of The Government.
- *Required by Law* has the same meaning as the term ``required by law'' in 45 CFR 164.501.
- *Secretary* means the Secretary of the Department of Health and Human Services or his/her designee.
- Terms used, but not otherwise defined, in this Provision shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

H.3.2. The contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Contract or as Required by Law.

H.3.3. The contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

H.3.4. The contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of Protected Health Information by the contractor in violation of the requirements of this Contract.

SECTION H
SPECIAL CONTRACT REQUIREMENTS

H.3.5. The contractor agrees to report to the Government any use or disclosure of the Protected Health Information not provided for by this Contract.

H.3.6. The contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the contractor on behalf of the Government agrees to the same restrictions and conditions that apply through this Contract to the contractor with respect to such information.

H.3.7. The contractor agrees to provide access, at the request of the Government, and in the time and manner designated by the Government to Protected Health Information in a Designated Record Set, to the Government or, as directed by the Government, to an Individual in order to meet the requirements under 45 CFR 164.524.

H.3.8. The contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Government directs or agrees to pursuant to 45 CFR 164.526 at the request of the Government or an Individual, and in the time and manner designated by the Government.

H.3.9. The contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the contractor on behalf of, the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Privacy Rule.

H.3.10. The contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

H.3.11. The contractor agrees to provide to the Government or an Individual, in time and manner designated by the Government, information collected in accordance with this Provision of the Contract, to permit the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

H.3.12. General Use and Disclosure Provisions

H.3.12.1. Except as otherwise limited in this Provision, the contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the Government for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Department of Defense Health Information Privacy Regulation if done by the Government: For all purposes necessary for performance of this contract.

H.3.13. Specific Use and Disclosure Provisions

H.3.13.1. Except as otherwise limited in this Provision, the contractor may use Protected Health Information for the proper management and administration of the contractor or to carry out the legal responsibilities of the contractor.

H.3.13.2. Except as otherwise limited in this Provision, the contractor may disclose Protected Health Information for the proper management and administration of the contractor, provided that disclosures are required by law, or the contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

H.3.13.3. Except as otherwise limited in this Provision, the contractor may use Protected Health Information to provide Data Aggregation services to the Government as permitted by 45 CFR 164.504(e)(2)(i)(B).

H.3.13.4. The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

H.3.14. Obligations of the Government

H.3.14.1. Provisions for the Government to Inform the contractor of Privacy Practices and Restrictions

SECTION H
SPECIAL CONTRACT REQUIREMENTS

H.3.14.1.1. Upon request the Government shall provide the contractor with the notice of privacy practices that the Government produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

H.3.14.1.2. The Government shall provide the contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect the contractor's permitted or required uses and disclosures.

H.3.14.1.3. The Government shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the Government has agreed to in accordance with 45 CFR 164.522.

H.3.15. Permissible Requests by the Government

H.3.15.1. The Government shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Government, except for providing Data Aggregation services to the Government and for management and administrative activities of the contractor as otherwise permitted by this Provision.

H.3.16. Termination: A breach by the contractor of this Provision, may subject the contractor to termination under any applicable default or termination provision of this Contract.

H.3.16.1. If this contract has records management requirements, the records subject to the Provision should be handled in accordance with the records management requirements. If this contract does not have records management requirements, the records should be handled in accordance with paragraphs (2) and (3) below.

H.3.16.2. If this contract does not have records management requirements, except as provided in paragraph (3) of this section, upon termination of this Contract, for any reason, the contractor shall return or destroy all Protected Health Information received from the Government, or created or received by the contractor on behalf of the Government. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the contractor. The contractor shall retain no copies of the Protected Health Information.

H.3.16.3. If this contract does not have records management provisions and the contractor determines that returning or destroying the Protected Health Information is infeasible, the contractor shall provide to the Government notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Government and the contractor that return or destruction of Protected Health Information is infeasible, the contractor shall extend the protections of this Contract to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the contractor maintains such Protected Health Information.

H.3.17. Miscellaneous

H.3.17.1. Regulatory References. A reference in this Provision to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

H.3.17.2. Survival. The respective rights and obligations of Business Associate under the Termination terms at H.3.15. of this Provision shall survive the termination of this Contract.

H.3.17.3. Interpretation. Any ambiguity in this Provision shall be resolved in favor of a meaning that permits the Government to comply with the Privacy Rule.

H.4. SPECIAL PROVISION - SECURITY OF PROTECTED HEALTH INFORMATION

H.4.1. Definitions. As used in this Provision:

- *Electronic Protected Health Information has the same meaning as the term "electronic protected health information" in 45 CFR 160.103.*
- *Secretary means the Secretary of the Department of Health and Human Services or his/her designee.*

SECTION H
SPECIAL CONTRACT REQUIREMENTS

- *Security Rule means the Security Standards for the Protection of Electronic Protected health Information at 45 CFR part 160 and part 164, subpart C.*
- *Terms used, but not otherwise defined, in this Provision shall have the same meaning as those terms in 45 CFR 160.103, 164.103, and 164.304.*

H.4.2. The contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government.

H.4.3. The contractor agrees to report to the Government any security incident of which it becomes aware.

H.4.4. The contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government, agrees to the same restrictions and conditions that apply through this Contract to the contractor with respect to such information.

H.4.5. The contractor agrees to make internal practices, books, and records relating to the security of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Security Rule.

H.4.6. Termination: A breach by the contractor of this Provision, may subject the contractor to termination under any applicable default or termination provision of this Contract.

H.4.7. Miscellaneous

H.4.7.1. Regulatory References. A reference in this Provision to a section in the Security Rule means the section as in effect or as amended, and for which compliance is required.

H.4.7.2. Interpretation. Any ambiguity in this Provision shall be resolved in favor of a meaning that permits the Government to comply with the Security Rule.